

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 8, 2026 Session

IN RE SHELBY B.¹

Appeal from the Circuit Court for Davidson County
No. 24C2358 Thomas W. Brothers, Judge

No. M2025-01404-COA-R3-JV

This appeal arises from dependency and neglect proceedings concerning the minor child, Shelby B., (“Shelby”), the child of Tyffany B. (“Mother”), and Lakota B. (“Father”). The petitioner, Sophia H. (“Grandmother”), with whom Shelby had been residing for several years, filed the petition alleging that Shelby was dependent and neglected under Tennessee Code Annotated § 37-1-102(b)(13)(J), which defines a dependent and neglected child as one “[w]ho has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child’s parent . . . and the child will suffer substantial harm if removed from the continuous care of such relative[.]” After the juvenile court found Shelby was dependent and neglected, Mother appealed to the circuit court. Following a two-day de novo hearing, the circuit court also ruled Shelby dependent and neglected and vested custody with Grandmother. Mother appealed. Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., C.J., delivered the opinion of the Court, in which ANDY D. BENNETT and KRISTI M. DAVIS, JJ., joined.

Brandon M. Booten, Gallatin, Tennessee, for the appellant, Tyffany B.

William H. Stover, Nashville, Tennessee, for the appellee, Sophia H.

Nick Perenich, Nashville, Tennessee, Guardian Ad Litem for Shelby B.

¹ This Court has a policy of protecting the identity of children by initializing the last names of the parties.

OPINION

FACTS AND PROCEDURAL HISTORY

Shelby was born in December 2010. Until 2018, Shelby resided with Mother. After Shelby was transferred to an elementary school close to Grandmother, Shelby began staying with Grandmother the majority of the time. By 2019 Shelby was residing with Grandmother full time while visiting with Mother for overnight stays on occasion; however, Shelby seldom spent the entire evening with Mother. Instead, she called Grandmother to come pick her up early due to incidents at Mother's home.

In July 2023, Grandmother and Shelby travelled to Georgia to attend a wedding. Upon learning that Grandmother and Shelby were attending the wedding, Mother called the police, reporting that Shelby had been kidnapped. Mother also contacted Shelby directly via phone calls and text messages, threatening Shelby with numerous consequences. These communications greatly upset Shelby.

On August 7, 2023, Grandmother filed a petition for custody in the juvenile court for Davidson County based on allegations of dependency and neglect under Tennessee Code Annotated § 37-1-102(b)(13)(J). Grandmother alleged that Mother and Father had permitted Shelby to reside with Grandmother for more than five years and that the parents had failed to provide financial support for the eighteen months prior to the filing of the petition. Grandmother also alleged that Shelby would suffer substantial harm if removed from her care. Shortly thereafter, the juvenile court ordered a drug screen of Mother, which returned positive results for cocaine and marijuana.²

A temporary restraining order enjoining Mother and Father from interfering with Grandmother's care, custody and control of Shelby was entered August 7, 2023.

The case was tried on April 3 and July 31, 2024, in the Juvenile Court of Davidson County by Magistrate E. Elijah Wilhoite. Shelby,³ Grandmother, Father, and Mother testified. In an order entered August 30, 2024, the juvenile court magistrate ruled that Shelby was dependent and neglected under Tennessee Code Annotated § 37-1-102(b)(13)(J), and custody was vested with Grandmother.

² A later drug screen, administered April 3, 2024, was negative for all substances.

³ Shelby was thirteen years old at the time of trial.

Following the entry of Magistrate Wilhoite's decision as a final order of custody, Mother appealed that decision to the circuit court on September 30, 2024 pursuant to Tennessee Rule of Civil Procedure 38.03.

Judge Thomas W. Brothers of the Circuit Court for Davidson County held a hearing on October 25, 2024, upon Grandmother's Amended Motion for Temporary Child Support. Thereafter, the court appointed a Special Master to conduct a hearing to determine the amount of child support due from Mother and Father. The Special Master's Report, filed April 1, 2025, found, *inter alia*, that Mother was willfully unemployed and set support to be provided by Mother and Father. The report was confirmed in an order by Judge Brothers filed April 15, 2025, with an effective date of April 11, 2025.

Before a *de novo* trial on the petition commenced, Father entered into an agreed order granting custody to Grandmother and affording Father visitation. Consequently, no claims relating to Father were adjudicated at trial. The circuit court then proceeded with a non-jury trial July 21–22, 2025 with only Mother opposing the petition.

Grandmother testified first, and the court found her testimony coherent, consistent, and credible. Grandmother stated that Shelby had lived with her since 2018 with the consent of Mother and Father. She further testified that in the eighteen months prior to the filing of the petition, Shelby had infrequent overnight visits with Mother and that on two occasions Shelby asked to be picked up because of concerns for her safety.

Grandmother asserted that she provided all the financial support for Shelby since February 2022. Although Mother occasionally sent food items for Shelby, it was merely token support. Grandmother also addressed concerns about the safety of Mother's neighborhood, citing shootings in the area.

Additional concerns were raised about Mother's abusive and threatening text messages to Shelby. Grandmother testified that Mother, *inter alia*, used vulgar and offensive terms to describe Shelby and texted Shelby scurrilous allegations concerning Grandmother and Father, which messages Shelby found hurtful and threatening.

The court next heard from Shelby, whose testimony the court found credible. Shelby testified that she had lived in Grandmother's home since 2018, where she had her own room with a bed, desk, clothes, and shoes. Shelby testified that in May 2023 she was on an overnight visit with Mother. While taking the dog out for a late-night potty break, Shelby saw Mother on the couch engaged in a sexual liaison with an unknown man. She called Grandmother and requested to be picked up. When she discussed it with Mother later, Mother called Shelby a liar.

Shelby testified that in 2022 Mother accused Shelby of stealing and hit her with a closed fist as punishment.

Then, Shelby produced and discussed text messages from Mother on March 30 and April 1, 2025, including the following:

- a. "I'm so disappointed you've become the one thing I despise, a liar"
- b. "And take all those pics of your lips off social media, stop advertising slut stuff"
- c. "Y'all on some bullshit tbh"
- d. "girl you really need to look at what's happening. you acted like you couldn't speak to me???? f**k you and [Father] and [Grandmother]!"
- e. "I will never forgive y'all for this. she knew you were the only thing that mattered to me. . . ."
- f. "and it's messed up because I make way more money than her. You have all this stuff I've bought for you here that I'm sick of looking at giving it all away! I wash my hands of this and YOU until you do the right thing and stop being a low down nothing ass liar! the only way you will ever be in my good graces again is if you come clean to me and the courts! until then I don't know you!"

Shelby also testified that she feels like something bad may happen if she is returned to Mother's care.

Father testified next, stating that Shelby had resided with Grandmother continuously since February 2022. He testified that he had concerns about the safety of Mother's neighborhood, as well as a concern that Mother would get in Shelby's face if returned to her custody due to her anger issues. The court found Father's testimony credible.

Next, the court heard from Perrin Holloway, Shelby's counselor. Ms. Holloway testified that Shelby and Mother do not have a good relationship, and she did not believe Shelby should move back in with her mother at this time.

The court then heard from three of Mother's friends, Robin Darby, Danielle Jones, and Jamont Jordan. However, the court discredited their testimony because it was contradictory or was credibly rebutted by Shelby.

Lastly, Mother testified. Mother was asked about the text message she sent Shelby asserting scandalous allegations about Grandmother and Father. Initially, Mother testified that the message was intended for another recipient but later admitted she had sent it to Shelby and that it was wrong.

Regarding the message Mother sent to Shelby that Shelby was a "low down nothing ass liar," Mother first attempted to justify the message but then admitted that it was sent to Shelby because she wanted to hurt Shelby as well as Grandmother and Father. Mother also

acknowledged sending the text messages to Shelby as she traveled to Georgia for the wedding.

Mother attributed Shelby's stated preference to live with Grandmother to a lack of discipline in the home and gifts from Grandmother.

Mother then testified about her employment and income. She asserted she is a content creator for Meta, but that, at the time of trial, she had not been paid for about four months. Mother acknowledged that she had not made any child support payments pursuant to the Special Master's Temporary Order of Child Support.

Mother received a payout from a life insurance policy of \$83,888 in February of 2020, which she placed in Grandmother's debit account, purportedly because Mother did not qualify to open a bank account herself. The account remained in Grandmother's name, but Grandmother gave Mother a debit card for the account. The funds from the life insurance policy were commingled with direct deposits from Grandmother's employer. At trial, the parties vigorously disputed how the money was spent and whether it benefitted Shelby. However, credible testimony established that the funds were exhausted by October of 2020, outside of the relevant eighteen-month time period.⁴

Mother testified that she provided "gifts" for Shelby's care in the amounts of \$5.50, \$21.54, \$10.54, \$61.08 and \$80.74. Mother provided no other proof of financial support for Shelby during the eighteen months preceding the filing of the petition.

In its final order, the circuit court discredited Mother's testimony, finding it inconsistent and erratic.

After hearing the evidence, the circuit court then analyzed the two prongs of Tennessee Code Annotated § 37-1-102(b)(13)(J), whether Shelby had been in Grandmother's sole financial care and sole physical care since February 7, 2022 (eighteen months prior to the filing of the petition) and whether Shelby would suffer substantial harm if removed from Grandmother's care.

Ruling that "no consistent or credible testimony rebutting the testimony that Shelby had been in the sole physical care of [Grandmother] since 2019" had been presented, the court found that Grandmother had proven the first prong by clear and convincing evidence. The circuit court also found that Shelby was in Grandmother's sole financial care during the applicable time period, ruling "[Mother] could only substantiate a total of \$179.40 in payments she gave to [Grandmother] in the form of class action settlements and prepaid

⁴ The circuit court ruled that, because the funds were depleted before the eighteen month period prescribed by Tennessee Code Annotated § 37-1-102-(b)(13)(J), these funds had no relevance to the "sole financial care" prong of the statute.

electronic debit cards. . . . These contributions do not rise to a level that would constitute regular, dependable support[.]” Thus, Shelby was found to have been in Grandmother’s sole financial care for the relevant eighteen-month period.

Turning next to the element of substantial harm, the court cited Mother’s communications with Shelby showing “an alarming pattern of abusive language and conduct” and which displayed “a callous indifference to her daughter’s emotional experience.” The court also noted Shelby’s stated preference to remain with Grandmother.

Based on these and numerous other factual findings set forth in the circuit court’s eighteen-page final order filed August 11, 2025, the court found Shelby to be dependent and neglected under Tennessee Code Annotated § 37-1-102(b)(13)(J)⁵ and vested custody with Grandmother.⁶

This appeal followed.

ISSUES

Mother presents the following issues for review on appeal:

1. Did the trial court improperly find that Shelby was dependent and/or neglected at the time of the filing of the petition?
2. Did the trial court improperly find that Shelby will suffer substantial harm, regardless of when the evidence occurred?

Grandmother presents the following issues for review on appeal:

1. Whether the trial court finding that Shelby was dependent and neglected at the time of the filing of the petition was proper.
2. Whether the trial court finding that Shelby will suffer substantial harm if returned to Mother was proper.

The guardian ad litem filed a brief on appeal supporting the trial court’s decision.

⁵ As the statute requires, the court also considered whether Mother had committed severe child abuse under Tennessee Code Annotated § 37-1-129(2)(A) & (B) but declined to make such a finding.

⁶ The final order also set the parents’ respective child support obligations.

STANDARD OF REVIEW

“A parent’s right to the care and custody of his or her child is among the oldest of the liberty interests protected by the due process clauses of the federal and state constitutions.” *In re Angelleigh R.*, No. M2020-00504-COA-R3-JV, 2021 WL 1994033, at *5 (Tenn. Ct. App. May 19, 2021) (citing *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L.Ed.2d 49 (2000); *Hawk v. Hawk*, 855 S.W.2d 573, 578–79 (Tenn. 1993); *Ray v. Ray*, 83 S.W.3d 726, 731 (Tenn. Ct. App. 2001)). However, a parent’s rights, while fundamental, are not absolute. *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010). The right continues without interruption only as long as a parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination, *In re Markus E.*, 671 S.W.3d 437, 455 (Tenn. 2023), such as when the child is found to be dependent and neglected or when a parent is found to have engaged in severe child abuse.

Dependency and neglect must be established by clear and convincing evidence. *In re S.J.*, 387 S.W.3d 576, 587 (Tenn. Ct. App. 2012) (citing Tenn. Code Ann. § 37-1-129). Evidence is clear and convincing when there is no serious or substantial doubt about the conclusions drawn from the evidence. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

We review the trial court’s findings of fact de novo with a presumption of correctness, unless the evidence preponderates otherwise. *In re Brooklyn S.*, No. M2017-00390-COA-R3-JV, 2017 WL 5185459, at *7 (Tenn. Ct. App. Nov. 8, 2017) (citing *In re Tamera W.*, 515 S.W.3d 860, 871 (Tenn. Ct. App. 2016)). But a trial court’s conclusions of law will be reviewed de novo with no presumption of correctness. *Id.* (citing *S. Constructors, Inc. v. Loudon Cnty. Board of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001)).

ANALYSIS

Mother argues that, in reaching the conclusion that Shelby was a dependent and neglected child as defined in Tennessee Code Annotated § 37-1-102(b)(13)(J), the circuit court improperly considered evidence occurring after the filing of the petition and up to the date of the de novo hearing.⁷

The version of Tennessee Code Annotated § 37-1-102(b)(13)(J) in effect when the petition was filed defined a dependent and neglected child as one “[w]ho has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child’s parent . . . and the child will suffer substantial harm if removed from the continuous care of such relative[.]”

⁷ While Mother alleges that post-petition events may not be considered in the initial adjudication phase of the analysis, she acknowledges they may be considered to make a “disposition best suited to the protection and physical, mental and moral welfare of the child.” Tenn. Code Ann. § 37-1-130(a).

Dependency and neglect proceedings require a two-step analysis. *Green v. Green*, No. M2007-01263-COA-R3-CV, 2009 WL 348289, at *5 (Tenn. Ct. App. Feb. 11, 2009). “First, under Tenn. Code Ann. § 37-1-129, the court is to hold a hearing and make findings whether a child is dependent and neglected.” *Id.* This is referred to as the adjudication phase. Then,

[I]f the juvenile court finds the child to be dependent and neglected by clear and convincing evidence, then the juvenile court is to proceed . . . to make “a proper disposition in the case.” Tenn. Code Ann. § 37-1-129(c). Making a “proper disposition” requires the court to make a custody decision “best suited to the protection and physical, mental and moral welfare of the child.” Tenn. Code Ann. § 37-1-130(a).

Id. This second phase is referred to as the dispositional phase. Mother contends the circuit court should have never gotten to the dispositional phase because, she argues, the pre-petition evidence is insufficient to clearly and convincingly establish that Shelby was a dependent and neglected child. More specifically, she contends the pre-petition evidence is insufficient to establish that Shelby will suffer substantial harm if removed from the continuous care of Grandmother.

The current version of the statute states that “[d]ependent and neglected child” means a child **at the time of the filing of the petition . . .**” Tenn. Code Ann. § 37-1-102(b)(13) (emphasis added). However, the bolded language went into effect July 1, 2024, after the petition in this matter was filed on August 7, 2023.

The statute in effect when the petition was filed did not include the limiting phrase, “at the time of the filing of the petition.” We apply the law in effect when the dependency and neglect petition was filed. *In re Skylar K.*, No. M2024-01890-COA-R3-JV, 2026 WL 480065, at *2 n.2 (Tenn. Ct. App. Feb. 20, 2026) (citing *In re Braxton M.*, 531 S.W.3d 708, 732 (Tenn. Ct. App. 2017)). Thus, the version of the statute in effect on August 7, 2023, applies to this case.

Regarding the first prong of the statute, whether the child has “willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child’s parent,” a fair reading of the statute, before or after the 2024 amendment, limits the court’s review to the period prior to the filing of the petition. *See* Tenn. Code Ann. § 37-1-102(b)(13)(J)(i). However, we find no such limitation to the second prong, which requires a finding that “the child will suffer substantial harm if removed from the continuous care of such relative.” *Id.* Indeed, as we have previously held, the circuit court is to determine whether the child is dependent and neglected as of the time of the de novo hearing. *See In re Caleb L.C.*, 362 S.W.3d 581, 599 (Tenn. Ct. App. 2011) (citing *Green v. Green*, No. M2007-01263-COA-R3-CV, 2009 WL 348289, (Tenn. Ct. App. Feb. 11, 2009)). Thus, post-petition evidence may and should be considered to

determine whether “the child will suffer substantial harm if removed from the continuous care of such relative.” *See* Tenn. Code Ann. § 37-1-102(b)(13)(J)(i).

The pre-petition evidence in this record clearly and convincingly proves that Mother willfully left Shelby in the sole financial care and physical care of a relative, Grandmother, for more than eighteen months prior to the filing of the petition.⁸ Thus, we affirm the circuit court’s findings regarding the sole physical and financial care of Shelby during the relevant time period. *See* Tenn. Code Ann. § 37-1-102(b)(13)(J)(i).

We turn next to the element of substantial harm. Pre-petition evidence clearly established Mother’s hostile, threatening and upsetting phone calls and text messages to Shelby. And the circuit court made numerous findings of fact about events that occurred prior to the August 7, 2023 filing, including the following:

32. [Shelby] testified further that in May of 2023 she stayed overnight with her mother and there was an incident that prompted her to call her grandmother to come pick her up early; when she was taking the dog out late at night to relieve itself, she saw her mother on the couch with a “dude” in a romantic engagement. When she discussed it with her mother, her mother called her a “liar.”

33. When [Shelby] was riding with her grandmother to Georgia in July 2023, the incident that gave rise to the instant Petition, [Shelby’s] mother told her that it would “be the worst day of her life” and she felt that her mother meant that she was going to hurt her when she saw her.

34. [Shelby] testified that in 2022 her mother came to pick her up from her grandmother’s house with the intent to keep her permanently, but she only ended up staying for three days; on the third day her mother accused her of stealing and began to beat her with her open hand and her closed fist on her back, side, and face. She testified that it hurt, and she did not tell anyone about the incident.

(citations to the trial court record omitted).

Thus, even if we limit our review to the evidence existing prior to the filing of the petition, we conclude, as the circuit court did, that the record contains clear and convincing evidence that Shelby would suffer substantial harm if removed from the continuous care of Grandmother.

⁸ Mother does not contest on appeal the fact that Shelby was willfully left in the sole financial and physical care of a related caregiver for eighteen months. *See* Tenn. Code Ann. § 37-1-102(b)(13)(J).

However, the circuit court was not limited to consideration of pre-petition evidence in determining whether the substantial harm element of Tennessee Code Annotated § 37-1-102(b)(13)(J) had been met. Moreover, the evidence fully supports the circuit court's determination that Shelby would suffer substantial harm if removed from Grandmother's care.

After citing numerous specific facts it found relevant and proven, the circuit court concluded:

[Grandmother] has successfully shown by clear and convincing evidence that [Shelby] will suffer substantial harm if the Court were to Order her to return her mother's residence. . . . Therefore, were the Court to order [Shelby] to return to her mother's care, the Court would be sending her to a living situation where the provision of her everyday needs such as food and clothing would be in much more doubt than if she were to remain in the physical and financial care of her grandmother. [Shelby]'s testimony that her mother had struck her with a closed fist is of great concern, but the Court cannot find that this single instance of physical violence amounts to severe child abuse under Tenn. Code Ann. § 37-1-129(b)(2).

Beyond the lack of proof of financial fitness to care for [Shelby], the Court also finds that [Shelby] would be at great risk of mental and emotional harm should she be returned to live with her mother. The text messages provided to the Court show an alarming pattern of abusive language and conduct from [Mother] toward [Shelby]. Far from exhibiting genuine remorse for the hurtful language she used in her communications with [Shelby], [Mother] affirmed that she sent some texts with the intent to harm [Shelby], Grandmother, and [Father]. Similarly, she maintained at multiple points in her testimony that [Shelby] was a liar and consistently expressed a callous indifference to [Shelby]'s emotional experience. It is plain from the text exchanges and [Shelby]'s testimony that the relationship between mother and daughter is severely strained, and it would cause substantial harm for [Shelby] to be thrust back into such a volatile situation. Perhaps most importantly, [Shelby] expressed clearly that she wished to remain with her grandmother. Therefore, the Court determines that [Shelby] is dependent and neglected under the statutory definition provided by Tenn. Code Ann. § 37-1-102(b)(13)(J).

Having reviewed the record, we find the evidence clearly and convincingly supports the circuit court's findings and conclusion that Shelby "will suffer substantial harm" if removed from Grandmother's home.

Accordingly, we affirm the circuit court's conclusion that Shelby is a dependent and neglected child under the definition as defined in Tennessee Code Annotated § 37-1-102(b)(13)(J).

Mother does not challenge the circuit court's dispositional determination that Shelby should remain in the custody of Grandmother; thus, that ruling remains in effect.

For the foregoing reasons, we affirm the judgment of the circuit court in all respects.

IN CONCLUSION

Based on the foregoing, we affirm the judgment of the circuit court and remand for proceedings consistent with this opinion. Costs of appeal are assessed against the appellant, Tyffany B.

FRANK G. CLEMENT JR., C.J.